



# New Mexico State Senate

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**SENATOR DEDE FELDMAN**

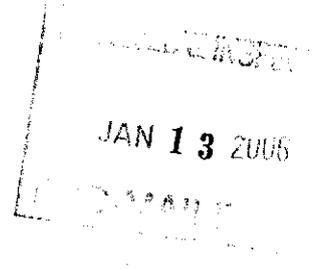
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January 11, 2006

Via Overnight Delivery

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-B204  
Washington, D.C. 20554

RE: CG Docket No. 02-278; Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991; Petition for Declaratory  
Ruling of The Fax Ban Coalition

Dear Madam Secretary:

As a member of New Mexico's State Senate and primary sponsor of our state's Junk Fax Law, I wish to express my opposition to the Petition filed by The Fax Ban Coalition. It is my understanding that The Fax Ban Coalition (the "Coalition") requests the Federal Communications Commission (the "Commission" or "FCC") to: (1) preempt all State laws purporting to regulate "interstate facsimile transmissions" or "interstate commercial fax messages"; and (2) declare that the FCC has exclusive authority to regulate "interstate facsimile transmissions" or "interstate commercial fax messages".

I am of the opinion that the Coalition mischaracterizes the States' laws -- including that of New Mexico -- about which it complains, and incorrectly asserts that Congress has conferred on the FCC exclusive and plenary regulatory jurisdiction over unsolicited facsimile advertisements.

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Contrary to these claims, the laws challenged by the Coalition do not regulate “interstate facsimile transmissions” or “interstate commercial fax messages”. Rather, the States have adopted consumer protection statutes governing the sending of unsolicited fax advertisements. These laws are designed to protect the privacy of consumers and businesses alike against the intrusion and costs of unwanted advertisements.

As a business owner, I can personally attest to the financial burden unsolicited facsimile advertisements impose. Not only must I incur direct costs, e.g., the cost of paper, ink, wear and tear on my facsimile machine, but indirect costs as well in order to receive unsolicited and often unwanted facsimile advertisements, many of which are of dubious origin for questionable products or services. Employee time must be spent sifting through faxes, sorting those pertinent to my business from those which are not. That is time stolen from the workday. Further, the time my machine is printing an advertisement is time my machine is not operational for the conduct of my business, thereby interfering with my ability to conduct business.

As a homeowner who also maintains a home business office, I regard receipt of unsolicited fax advertisements as an invasion of my privacy, an intrusion into my home. I have been awakened at all hours of the night by the sound of the fax machine, only to discover, more often than not, a fax advertisement awaiting me for a product or service I did not want, did not solicit, and from a company with which I had no established business relationship.

I am not alone in my objections to the intrusive nature of unsolicited fax advertisements, and the financial burden that is shifted from the advertiser onto the shoulders of businesses and consumers. That is why, after listening to many complaints of my constituents, I sponsored a bill to place certain restrictions on the senders of unsolicited fax advertisements. That bill was passed into law without a single voice, without a single dissenting vote in the Legislature, in opposition.

New Mexico’s Junk Fax law makes it unlawful for any person or entity to send an advertisement to a fax machine without the recipient’s prior express consent or permission. The law applies only if the person or entity sending the fax, or the recipient, is located within New Mexico. Like the other State laws challenged in the Petition, our Junk Fax law is, at its core, a consumer protection statute, intended to protect the privacy of consumers and prevent the financial burden and intrusion that unsolicited fax advertisements thrust upon consumers and businesses alike.

It is my understanding that the federal Communications Act of 1934 preserves to the States regulation of the telecommunication industry and limits preemption only to those areas where Congress has expressly stated its intent to preempt. This is consistent with long-standing principles of joint jurisdiction. Congress has not stated any intent, expressly or inferentially, that the Commission should solely occupy the field of fax advertisement regulation. There is no clear statement in the Telephone Consumer Protection Act, 47 U.S.C. Section 227, of express Congressional intent to preempt state law governing the sending of unsolicited fax advertisements by individuals or entities doing business in the respective States. To the contrary, with regard to the Junk Fax Prevention Act of 2005, in Senate Report 109-76, the U.S. Senate expressly stated that this Act “would not affect the ability of states to establish stricter rules for

the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements." Thus, it would appear to me that the States are free to regulate those areas not expressly reserved to Congress, to include unsolicited facsimile advertisements, i.e., "junk faxes."

I therefore respectfully request the Commission to deny the Petition for Declaratory Ruling submitted by the Coalition. Let us, the States and the FCC together, continue to work together to protect the rights of our citizens.

Sincerely yours,

A handwritten signature in cursive script that reads "Dede Feldman". The signature is written in black ink and has a fluid, connected style.

Senator Dede Feldman